with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2015–101, and should be submitted on or before December 11, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–29598 Filed 11–19–15; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76445; File No. SR–NASDAQ–2015–133]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Create a Market Access and Routing Subsidy or ''MARS''

November 16, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on November 2, 2015, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's transaction fees at Chapter XV, Section 2 entitled ''NASDAQ Options Market—Fees and Rebates,'' which governs pricing for Nasdaq Participants using the NASDAQ Options Market (''NOM''), Nasdaq's facility for executing and routing standardized equity and index options. The Exchange proposes to create a subsidy program, the Market Access and Routing Subsidy or ''MARS,'' for NOM Participants that provide certain order routing functionalities [3] to other NOM Participants and/or use such functionalities themselves.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[3] The order routing functionalities permit a NOM Participant to provide access and connectivity to other Participants as well utilize such access for themselves. The Exchange notes that under this arrangement it will be possible for one NOM Participant to be eligible for payments under MARS, while another NOM Participant might potentially be liable for transaction charges associated with the execution of the order, because those orders were delivered to the Exchange through a NOM Participant's connection to the Exchange and that Participant qualified for the MARS Payment. Consider the following example: both Participants A and B are NOM Participants but A does not utilize its own connections to route orders to the Exchange, and instead utilizes B's connections. Under this program, B will be eligible for the MARS Payment while A is liable for any transaction charges resulting from the execution of orders that originate from A, arrive at the Exchange via B's connectivity, and subsequently execute and clear at The Options Clearing Corporation or ''OCC,'' where A is the valid executing clearing Participant or give-up on the transaction. Similarly, where B utilizes its own connections to execute transactions, B will be eligible for the MARS Payment, but would also be liable for any transaction [sic] resulting from the execution of orders that originate from B, arrive at the Exchange via B's connectivity, and subsequently execute and clear at OCC, where B is the valid executing clearing Participant or give-up on the transaction.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NOM proposes a new subsidy program, MARS, which would pay a subsidy to NOM Participants that provide certain order routing functionalities to other NOM Participants and/or use such functionalities themselves. Generally, under MARS, NOM proposes to make payments to participating NOM Participants to subsidize their costs of providing routing services to route orders to NOM. The Exchange believes that MARS will attract higher volumes of electronic equity and ETF options volume to the Exchange from non-NOM Participants as well as NOM Participants.

MARS System Eligibility

To qualify for MARS, a NOM Participant's routing system (hereinafter ''System'') would be required to meet certain criteria. Specifically the Participant's System would be required to: (1) Enable the electronic routing of orders to all of the U.S. options exchanges, including NOM; (2) provide current consolidated market data from the U.S. options exchanges; and (3) be capable of interfacing with NOM's API to access current NOM match engine functionality. The NOM Participant's System would also need to cause NOM to be one of the top three default destination exchanges for individually executed marketable orders if NOM is at the national best bid or offer (''NBBO''), regardless of size or time, but allow any user to manually override NOM as the default destination on an order-by-order basis.

The Exchange would require NOM Participants desiring to participate in MARS [4] to complete a form, in a manner prescribed by the Exchange, and reaffirm their information on a quarterly basis to the Exchange. Any NOM Participant would be permitted to apply for MARS, provided the above-referenced requirements are met,

[4] For example, a NOM Participant that desires to qualify for MARS in November must complete the form and submit it to the Exchange no later than the last business day of November. Such form will require the NOM Participant to identify the NOM Participant seeking the MARS Payment and must list, among other things, the connections utilized by the NOM Participant to provide Exchange access to other NOM Participants and/or itself. MARS Payments would be made one month in arrears (*i.e.,* a MARS Payment earned for activity in November would be paid to the qualifying NOM Participant in December), as is the case with all other transactional payments and assessments made by the Exchange.

including a robust and reliable System. The Participant would be solely responsible for implementing and operating its System.

MARS Eligible Contracts

A MARS Payment would be made to NOM Participants that have System Eligibility and have routed at least 5,000 Eligible Contracts daily in a month, which were executed on NOM. For the purpose of qualifying for the MARS Payment, Eligible Contracts may include Firm,[5] Non-NOM Market Maker,[6] Broker-Dealer,[7] Joint Back Office or ''JBO'' [8] or Professional [9] equity option orders that add liquidity and are electronically delivered and executed. Eligible Contracts do not include Mini-Option orders.[10]

NOM Participants using an order routing functionality provided by another Participant or its own functionality will continue to be required to comply with best execution obligations.[11] Specifically, just as with any Customer [12] order and any other routing functionality, a NOM Participant will continue to have an obligation to consider the availability of price improvement at various markets and whether routing a Customer order through a functionality that incorporates the features described above would allow for access to such opportunities if readily available. Moreover, a NOM Participant would need to conduct best execution evaluations on a regular basis, at a minimum quarterly, that include its use of any router incorporating the features described above.

MARS Payment

NOM Participants that have System Eligibility and have executed the Eligible Contracts in a month may receive the MARS Payment of $0.10 per contract. The MARS Payment will be paid only on executed Firm orders that add liquidity and which are routed to NOM through a participating NOM Participant's System. No payment will be made with respect to orders that are routed to NOM, but not executed.

A Participant will not be entitled to receive any other revenue for the use of its System specifically with respect to orders routed to NOM. The Exchange believes that the MARS Payment will subsidize the costs of NOM Participants in providing the routing services.

The Exchange proposes to add the MARS to new Chapter XV, Section 2(6), entitled ''Market Access and Routing Subsidy (''MARS'').''

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [13] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act [14] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Participants and issuers and other persons using any facility or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, for example, the Commission indicated that market forces should generally determine the price of non-core market data because national market system regulation ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [15] Likewise, in *NetCoalition* v. *NYSE Arca, Inc.,* 615 F.3d 525 (D.C. Cir. 2010), the DC Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[16] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [17]

Further, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [18] Although the Court and the SEC were discussing the cash equities markets, the Exchange believes that, as discussed above, these views apply with equal force to the options markets.

The Exchange believes that MARS is reasonable because it is designed to attract higher volumes of electronic equity and ETF options volume to the Exchange, which will benefit all NOM Participants by offering greater price discovery, increased transparency, and an increased opportunity to trade on the Exchange. Moreover, the Exchange believes that the proposed subsidy offered by MARS is both equitable and not unfairly discriminatory because any qualifying NOM Participant that offers market access and connectivity to the Exchange and/or utilizes such functionality themselves may earn the MARS Payment for all Eligible Contracts.

MARS System Eligibility

The Exchange believes that requiring NOM Participants to maintain their Systems according to the various requirements set forth by the Exchange in order to qualify for MARS is reasonable because the Exchange seeks to encourage market participants to send higher volumes of orders to NOM, which will contribute to the Exchange's depth of book as well as to the top of book liquidity. The Exchange also believes that the proposed MARS is reasonable because it is designed to enhance the competitiveness of the Exchange, particularly with respect to

[5] The term ''Firm'' or (''F'') applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC.

[6] The term ''Non-NOM Market Maker'' or (''O'') is a registered market maker on another options exchange that is not a NOM Market Maker. A Non-NOM Market Maker must append the proper Non-NOM Market Maker designation to orders routed to NOM.

[7] The term ''Broker-Dealer'' or (''B'') applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

[8] The term ''Joint Back Office'' or ''JBO'' applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC and is identified with an origin code as a JBO. A JBO will be priced the same as a Broker-Dealer as of September 1, 2014. A JBO participant is a Participant that maintains a JBO arrangement with a clearing broker-dealer (''JBO Broker'') subject to the requirements of Regulation T Section 220.7 of the Federal Reserve System as further discussed in Chapter XIII, Section 5.

[9] The term ''Professional'' or (''P'') means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Chapter I, Section 1(a)(48). All Professional orders shall be appropriately marked by Participants.

[10] Mini Options are further specified in Chapter XV, Section 2(4).

[11] *See* Nasdaq Rule 5310A.

[12] The term ''Customer'' or (''C'') applies to any transaction that is identified by a Participant for clearing in the Customer range at OCC which is not for the account of [sic] broker or dealer or for the account of a ''Professional'' (as that term is defined in Chapter I, Section 1(a)(48)).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4) and (5).

[15] Exchange Act Release No. 34–51808 (June 9, 2005) (''Regulation NMS Adopting Release'').

[16] *See NetCoalition,* 615 F.3d at 534.

[17] *Id.* at 537.

[18] *NetCoalition I,* 615 F.3d at 539 (quoting ArcaBook Order, 73 FR at 74782–74783).

those exchanges that offer their own front-end order entry system or one they subsidize in some manner.[19] The Exchange believes that requiring Participants to maintain their Systems according to the various requirements set forth by the Exchange in order to qualify for MARS is equitable and not unfairly discriminatory because these requirements will uniformly apply to all Participants desiring to qualify for MARS.

The Exchange also notes that the Chicago Board of [sic] Options Exchange, Inc. (''CBOE'') currently offers a similar Order Routing Subsidy (''ORS''), which, similar to the current proposal, allows CBOE Participants [sic] to enter into subsidy arrangements with CBOE Trading Permit Holders (''TPHs'') that provide certain order routing functionalities to other CBOE TPHs and/or use such functionalities themselves.[20] Also, NYSE MKT LLC (''NYSE MKT'') had a Market Access and Connectivity Subsidy (''MAC'') which allowed NYSE MKT Participants [sic] to enter into subsidy arrangements with ATP Holders that provided certain order routing functionalities to other ATP Holders and/or use such functionalities themselves. The NYSE MKT program was discontinued.[21] Finally, in 2007, NASDAQ OMX PHLX LLC (''Phlx'') offered a Market Access Provider Subsidy or ''MAPs'' as a per contract fee payable by the Phlx to Eligible Market Access Providers for Eligible Contracts submitted by MAPs for execution on Phlx. The subsidy was applicable to any Phlx member organization that qualified as a MAP and elected to participate for that calendar month.[22]

MARS Eligible Contracts

The Exchange believes that excluding the volumes attributable to Mini Options is reasonable, equitable, and not unfairly discriminatory for the reasons below. Mini Options are also subject to separate pricing.[23] The Exchange does not desire to pay an additional subsidy on top of the already discounted rates for Mini Options. Because all NOM Participants seeking to qualify for MARS would be treated equally with respect to excluding Mini Options volume, the proposal to exclude this volume from the MARS Payment is not inequitable or unfairly discriminatory.

The Exchange further notes that while MARS is only being offered to qualifying NOM Participants for electronically-executed equity option orders for Firms, Non-NOM Market Makers, Broker-Dealers, JBOs or Professionals that add liquidity and not, for example, on the electronic volumes of NOM Customers or NOM Market Makers[24] the Exchange believes this is reasonable, equitable and not unfairly discriminatory for the reasons below. With respect to Customer orders, the Exchange notes that Customer orders have the ability to earn rebates today.[25] Additionally, Customers are assessed lower transaction fees with certain fees.[26] The Exchange believes that the availability of these rebates for Customer volumes as well as certain lower transaction fees does not warrant paying an additional subsidy on Customer volumes in MARS. With respect to NOM Market Makers, the Exchange offers NOM Market Makers certain rebates[27] and assesses them lower transaction fees, as compared to other market participants.[28] The Exchange believes that the rebates coupled with the lower transaction fees already provide ample incentive for attracting NOM Market Maker volumes to the Exchange and that no further subsidy is warranted at this time.

The proposed MAC [sic] Subsidy is designed to attract higher margin business to the Exchange, business which at present has no opportunity to transact at rates anywhere close to the rate assessed to Customers and NOM Market Makers. To offer the proposed subsidy on Customer or NOM Market Maker electronic volume would require funding from some other source, such as raising fees for other Participants. As a result, the Exchange believes it is appropriate to permit eligibility based on the following type of volume: Firm, Non-NOM Market Maker, Broker-Dealer, JBO and Professional, which Participants are charged higher per contract transaction fees than other market Participants. The Exchange notes that it is commonplace within the options industry for exchanges to charge different rates and/or offer different rebates depending upon the capacity in which a participant is trading. For these reasons, the Exchange believes that the proposed change to offer a MARS Payment to qualifying NOM Participants on certain electronic volume is reasonable, equitable and not unfairly discriminatory for the reasons mentioned herein.

Finally, the Exchange believes that 5,000 Eligible Contracts is a reasonable level of contracts, because the Exchange is only counting add liquidity from Firms, Non-NOM Market Makers, Broker-Dealers, JBOs and Professionals which are electronically delivered and executed. The Exchange is not counting remove liquidity and therefore the number reflects what the Exchange believes to be an appropriate level of commitment from NOM Participants. The Exchange believes that 5,000 Eligible Contracts is equitable and not unfairly discriminatory because this level will be uniformly applied to all qualifying Participants.

MARS Payment

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to pay the proposed MARS Payment to NOM Participants that have System Eligibility and have executed the Eligible Contracts, even when a different NOM Participant may be liable for transaction charges resulting from the execution of the orders upon which the subsidy might be paid. The Exchange notes that this sort of arrangement already exists on other options exchanges such as Phlx which pays a Qualified Contingent Cross (''QCC'') Rebate for floor transactions.[29] Today, this arrangement on Phlx results in a situation where the floor broker is

[19] *See, e.g., supra* note 10 [sic]; Securities Exchange Act Release No. 34–54121 (July 10, 2006), 71 FR 40566 (July 17, 2006) (SR–ISE–2006–31) (describing PrecISE, which is a front-end, order entry application for trading options utilized by International Securities Exchange LLC).

[20] *See* note 34 [sic]. CBOE's programs permit both CBOE Participants and CBOE non-Participants to be eligible for a rebate. CBOE Participants are eligible to receive exchange transaction fees on transactions that earn a non-CBOE Participant a subsidy payment.

[21] *See* note 35 [sic]. *See also* Securities Exchange Act Release No. 75609 (August 11 [sic], 2015), 80 FR 48132 (August 5 [sic], 2015) (SR–NYSEMKT–2015–059).

[22] *See* Securities Exchange Act Release No. 56274 (August 16, 2007), 72 FR 48720 (August 24, 2007) (SR–Phlx–2007–54). This program is no longer being offered.

[23] *See* NOM's Rules at Chapter XV Section 2(5) [sic]

[24] The term ''NOM Market Maker'' or (''M'') is a Participant that has registered as a Market Maker on NOM pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security.

[25] *See* NOM's Rules at Chapter XV, Section 2(1).

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] *See* Phlx's Pricing Schedule. A Floor QCC Order must: (i) Be for at least 1,000 contracts, (ii) meet the six requirements of Rule 1080(o)(3) which are modeled on the QCT Exemption, (iii) be executed at a price at or between the NBBO; and (iv) be rejected if a Customer order is resting on the Exchange book at the same price. In order to satisfy the 1,000-contract requirement, a Floor QCC Order must be for 1,000 contracts and could not be, for example, two 500-contract orders or two 500-contract legs. *See* Phlx Rule 1064(e). *See also* Securities Exchange Act Release No. 64688 (June 16, 2011), 76 FR 36606 (June 22, 2011) (SR–Phlx–2011–56).

earning a rebate and one or more different Phlx members are potentially liable for the Exchange transaction charges applicable to QCC Orders. With the QCC rebates applicable to transactions executed on the trading floor, Phlx does not offer a front-end for order entry; unlike some of the competing exchanges, Phlx has argued that it is necessary from a competitive standpoint to offer this rebate to the executing floor broker on a QCC Order.[30] Also, all qualifying NOM Participants would be uniformly paid the subsidy on all qualifying volume that was routed by them to the Exchange and executed.

The Exchange believes the $0.10 per contract rate that is being offered to be paid as a subsidy is reasonable and will allow NOM Participants to price their services at a level that will enable them to attract order flow from market participants who would otherwise utilize an existing front-end order entry mechanism offered by the Exchange's competitors instead of incurring the cost in time and money to develop their own internal systems to be able to deliver orders directly to the Exchange's trading systems. The Exchange believes that offering a flat rate is reasonable because all qualifying NOM Participants would receive the same $0.10 per contract subsidy, provided they met the qualifications for MARS.

The Exchange believes that paying the MARS payments to a NOM Participant, solely on electronically delivered and executed Firm orders that add liquidity and are submitted by the qualifying NOM Participant, is reasonable because, as noted herein Customers and NOM Market Makers are offered other pricing incentives such as rebates and lower fees. With respect to Non-NOM Market Makers, Professionals, JBOs and Broker-Dealers the Exchange believes it is reasonable to differentiate these market participants and Firms for the reasons which follow. The Exchange desires to incentivize NOM Participants to transact Firm, Non-NOM Market Maker, JBO, Broker-Dealer and Professional orders on the Exchange to qualify for MARS and receive the subsidy for Firm orders that add liquidity. The Exchange believes that this proposal may incentivize NOM Participants that receive reduced rates at other options exchanges to select NOM as a venue to send Firm, Non-NOM Market Maker, JBO, Broker-Dealer and Professional orders by offering competitive pricing to these market participants in the form of a subsidy, even though the financial benefit will only be made with respect to Firm orders that add liquidity. Such competitive, differentiated pricing exists today on other options exchanges.[31] Further, the Exchange believes there is nothing impermissible about the MARS Payment being made solely on Firm orders that add liquidity. This practice is consistent with longstanding differentials between Firms, other Broker-Dealers, Non-NOM Market Makers and Professionals. The options exchanges have differentiated between: retail customers and professional customers; broker/dealers clearing in the ''Firm'' range at OCC and broker/dealers registered as market makers and away market makers; early-adopting market makers; and many others. The Commission has also permitted price differentiation based on whether an order is processed manually versus electronically. The proposal is consistent with previously established pricing proposals accepted by the Commission.

The Exchange believes that paying the MARS payments to a NOM Participant, solely on electronically delivered and executed Firm orders that add liquidity and are submitted by the qualifying NOM Participant, is equitable and not unfairly discriminatory because MARS should provide an incentive for Firms to add liquidity on NOM, which order flow brings increased liquidity to the Exchange for the benefit of all Exchange Participants. To the extent the purpose of the proposed MARS is achieved, all the Exchange's Participants, including Non-NOM Market Makers, Professionals and Broker-Dealers, should benefit from the improved market liquidity.

Further, the Exchange believes that paying the MARS payments to a NOM Participant, solely on executed on [sic] Firm orders that add liquidity and not paying a subsidy for the removal of liquidity, is reasonable because the Exchange desires to incentivize NOM participants to add liquidity to NOM. Today, NOM offers rebates to Customers, Professionals and NOM Market Makers for adding liquidity on NOM.[32] Attracting liquidity on NOM benefits all market participants who have an opportunity to interact with such liquidity. Further, the Exchange believes that paying the MARS payments to a NOM Participant, solely on executed Firm orders that add liquidity and not orders that remove liquidity, is equitable and not unfairly discriminatory because all NOM Participants that qualify for a MARS Payment would only be paid on add liquidity.

Finally, the Exchange believes that adding a new Chapter XV, Section 2(6) is reasonable, equitable and not unfairly discriminatory as it will make finding MARS easier for all Participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

MARS System Eligibility

The Exchange believes that requiring Participants to maintain their Systems according to the various requirements set forth by the Exchange in order to qualify for MARS does not create an undue burden on intra-market competition because the proposed requirements will uniformly apply to all Participants desiring to qualify for MARS.

MARS Eligible Contracts

The Exchange believes that excluding Mini Options does not create an undue burden on intra-market competition because this type of order will uniformly be excluded from the volume calculation for all qualifying NOM Participants for MARS.

The Exchange believes that excluding Customer and NOM Market Makers orders from the types of orders that would be eligible for MARS does not create an undue burden on intra-market competition, because Customers are

[30] *See also* Securities Exchange Act Release No. 64688 (June 16, 2011), 76 FR 36606 (June 22, 2011) (SR–Phlx–2011–56) (Order Granting Approval of Proposed Rule Change Establishing a Qualified Contingent Cross Order for Execution on the Floor of the Exchange).

[31] *See* Phlx's Pricing Schedule at Section II. Phlx offers Firms a Monthly Firm Fee Cap to lower transaction fees.

[32] *See* NOM's Rules at Chapter XV, Section 2(1).

assessed lower transaction fees and are eligible for rebates. With respect to NOM Market Makers, the Exchange offers NOM Market Makers rebates and assesses them lower transaction fees as compared to other Participants.

The Exchange believes that preventing Participants from receiving any other revenue for the use of its System, specifically with respect to orders routed to NOM does not create undue burden on intra-market competition because the Exchange would continue to uniformly apply its MARS requirements to all NOM Participants.

Finally, the Exchange believes that the 5,000 Eligible Contracts requirement does not create an undue burden on intra-market competition because this level will be uniformly applied to all qualifying NOM Participants.

MARS Payment

The Exchange believes that paying the proposed MARS Payment to qualifying NOM Participants that have System eligibility and have executed the Eligible Contracts does not create an undue burden on intra-market competition, even when a different NOM Participant, other than the NOM Participant receiving the subsidy, may be liable for transaction charges, because this sort of arrangement already exists on the Exchange [sic] and would be uniformly applied to all qualifying NOM Participants.

The Exchange believes that paying the proposed $0.10 per contract MARS Payment to qualifying NOM Participants that have System Eligibility and have executed the Eligible Contracts in a month, solely on executed Firm orders that add liquidity, does not create an undue burden on intra-market competition because the Exchange is counting all Firm, Non-NOM Market Maker, JBO, Broker-Dealer and Professional volume toward the Eligible Contracts. Customers and NOM Market Makers are offered other pricing incentives such as rebates and lower fees. The increased order flow will bring increased liquidity to the Exchange for the benefit of all Participants. To the extent the purpose of the proposed MARS is achieved, all the Exchange's Participants, including Non-NOM Market Makers, Professionals and Broker-Dealers, should benefit from the improved market liquidity.

The Exchange believes that paying the MARS payments to a NOM Participant, solely on electronically delivered and executed Firm orders that add liquidity, and are submitted by the qualifying NOM Participant, does not create an undue burden on intra-market competition because MARS should provide an incentive for Firms to add liquidity on NOM, which order flow brings increased liquidity to the Exchange for the benefit of all Exchange Participants. To the extent the purpose of the proposed MARS is achieved, all the Exchange's Participants, including Non-NOM Market Makers, Professionals and Broker-Dealers, should benefit from the improved market liquidity.

Further, the Exchange believes that paying the MARS payments to a NOM Participant, solely on executed Firm orders that add liquidity and not paying a subsidy for the removal of liquidity does not create an undue burden on intra-market competition because the Exchange desires to incentivize NOM participants to add liquidity to NOM. Attracting liquidity on NOM benefits all Participants who have an opportunity to interact with such liquidity. Also, all NOM Participants that qualify for a MARS Payment would only be paid on add liquidity.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[33]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2015–133 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2015–133. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2015–133, and should be submitted on or before December 11, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–29601 Filed 11–19–15; 8:45 am]

BILLING CODE 8011–01–P

[33] 15 U.S.C. 78s(b)(3)(A)(ii).

[34] 17 CFR 200.30–3(a)(12).